UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT S.D.N.Y.
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THE CARTOON NETWORK LP, LLLP and CABLE NEWS NETWORK LP, LLLP, Plaintiffs, vs. CSC HOLDINGS, INC. and CABLEVISION SYSTEMS CORPORATION, Defendants.	06 CIV. 4092 ECF CASE 06-CV-____ **COMPLAINT**

Plaintiffs The Cartoon Network LP, LLLP ("TCN LP") and Cable News Network LP, LLLP ("CNN LP"), by and through their undersigned attorneys, for their complaint against CSC Holdings, Inc. and Cablevision Systems Corporation (collectively "Cablevision") hereby allege as follows:

NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief to prevent Cablevision from infringing TCN LP's and CNN LP's valuable copyrights in programming. Cablevision has access to TCN LP's and CNN LP's copyrighted programming for a limited licensed use—to transmit the television signal containing that programming to Cablevision's subscribers substantially instantaneously as Cablevision receives it (the "licensed transmission"). Unless enjoined and restrained by the Court, Cablevision intends to take unlawful advantage of that access to exploit TCN LP's and CNN LP's copyrighted programming without permission for unlicensed uses. Specifically, Cablevision intends to copy TCN LP's and CNN LP's copyrighted

programming and transmit that programming to Cablevision's subscribers "on demand". Cablevision intends to engage in these unlicensed uses for its own commercial gain, thereby diminishing the ability of TCN LP and CNN LP to derive economic value from their copyrighted programming.

2. Plaintiffs TCN LP and CNN LP are limited liability limited partnerships that own and operate, *inter alia*, the United States-based cable television networks known as Cartoon Network, and CNN, CNN Headline News, CNN International, and CNN en Español (collectively the "CNN Networks"). TCN LP and CNN LP are in the business of creating, producing, licensing, and distributing television programming aired on their networks. They own the copyrights in numerous popular programs, such as *Larry King Live*, *Anderson Cooper 360°*, *Aqua Teen Hunger Force* and *Codename: Kids Next Door*.

3. In order to obtain distribution of their programming to consumers, TCN LP and CNN LP enter into licensing agreements (referred to as "affiliation agreements") with cable operators, such as Cablevision, which are in the business of providing cable television programming services to homes and businesses. The affiliation agreements between TCN LP and CNN LP on the one hand and Cablevision on the other hand carefully define the limited rights that Cablevision has obtained to distribute the programming. Cablevision has the limited right to transmit the programming on the Cartoon Network and the CNN Networks to Cablevision's subscribers only in its entirety as part of the licensed transmission.

4. So that Cablevision may transmit programming on the Cartoon Network or the CNN Networks to its subscribers as part of the licensed transmission,

each network transmits to Cablevision a continuous "feed", or signal, containing the programming. Cablevision then transmits the feed to its subscribers via the licensed transmission in accordance with its affiliation agreements.

5. Cablevision recently announced that it intends, in contravention of its affiliation agreements and without obtaining licenses from copyright holders, to copy and store programming on its servers and transmit that programming to its subscribers on demand (the "Service"). On information and belief, Cablevision will copy and transmit TCN LP's and CNN LP's copyrighted programming as part of the Service. The Service is outside the scope of the licensed transmission and is prohibited by Cablevision's affiliation agreements with TCN LP and CNN LP. Cablevision's unlicensed copying and transmitting of copyrighted programming as part of the Service will constitute a clear violation of the copyright laws. Injunctive relief is necessary to prevent such infringement from occurring.

6. TCN LP and CNN LP have informed Cablevision that, unless it obtains a license, Cablevision's Service will infringe their copyrights. Nonetheless, Cablevision has refused to negotiate licensing agreements for the Service.

7. Cablevision has taken meaningful preparatory steps to launch the Service and has announced, both publicly and in a letter, that it is prepared to commence the Service and that it intends to do so in June 2006. Cablevision's actions constitute an actual controversy, suitable for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, regarding *inter alia* whether, in the absence of a license, the Service will infringe TCN LP's and CNN LP's copyrights.

8. Without injunctive relief, TCN LP and CNN LP will be irreparably harmed by the Service because Cablevision will, in effect, be assuming for itself an exception to the copyright laws. TCN LP's and CNN LP's other opportunities to derive economic value from their copyrighted programming will be adversely affected in an amount that will be difficult if not impossible to quantify. There is no adequate remedy at law.

JURISDICTION AND VENUE

9. This is a civil action seeking declaratory and injunctive relief to prevent copyright infringement under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over Cablevision because, on information and belief, Cablevision transacts business in New York and has committed, or will commit, tortious acts within New York causing injury in New York. Specifically, Cablevision, whose principal place of business is in New York, has announced its intention to provide the Service to subscribers residing in New York.

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(a).

PARTIES

12. Plaintiff TCN LP is a Delaware Limited Liability Limited Partnership with its principal place of business in Atlanta, Georgia. TCN LP produces, creates and licenses, among other things, a network of programming distributed in the United States as the Cartoon Network, consisting of animated programming and non-animated programming related to animated topics. The Cartoon Network's programming

includes programming aimed at children as well as a programming block aimed at adults separately branded as "Adult Swim". TCN LP has an affiliation agreement with Cablevision pursuant to which Cablevision is entitled to transmit the Cartoon Network's programming solely as part of the licensed transmission. That agreement prohibits copying the programming and does not grant a license to publicly perform the programming at any time as video-on-demand programming. TCN LP owns the copyrights to a large amount of programming, including the copyrights to individual episodes of popular programs such as *Aqua Teen Hunger Force*, *Codename: Kids Next Door*, *Camp Lazlo* and *Robot Chicken*. A schedule of Registrations filed with the United States Copyright Office for certain episodes of these programs is attached as Exhibit A. In addition, TCN LP holds exclusive licenses to certain other original programming.

13. Plaintiff CNN LP is a Delaware Limited Liability Limited Partnership with its principal place of business in Atlanta, Georgia. CNN LP produces, creates and licenses, among other things, several networks of programming distributed in the United States and referred to herein as the CNN Networks, consisting of national and international news, sports programming, finance news, weather reports and features. CNN LP has an affiliation agreement with Cablevision for each of the CNN Networks pursuant to which Cablevision is entitled to transmit the programming on the CNN Networks solely as part of the licensed transmission. Those agreements prohibit copying the programming and do not grant a license to publicly perform the programming at any time as video-on-demand programming. CNN LP owns the copyrights to a large amount of programming, including the copyrights to individual episodes of popular programs such as *Larry King Live*, *Anderson Cooper 360°* and *Lou Dobbs Tonight*. A schedule of

Registrations filed with the United States Copyright Office for certain episodes of these programs is attached as Exhibit B. In addition, CNN LP holds exclusive licenses to certain other original programming.

14. On information and belief, defendants CSC Holdings, Inc. and Cablevision Systems Corporation are Delaware corporations, each with its principal place of business in Bethpage, New York. Defendant Cablevision Systems Corporation is a publicly traded company, whose holdings include all of the outstanding stock of Defendant CSC Holdings, Inc.

15. On information and belief, Cablevision is a large cable operator with approximately three million subscribers in and around the New York City metropolitan area.

THE CABLE INDUSTRY

16. On information and belief, Cablevision provides its subscribers with programming on a tiered basis, and charges its subscribers according to the level of service to which they subscribe. The Cartoon Network and the CNN Networks are available on all of Cablevision's tiers except for what it calls the "broadcast basic" tier, which is largely limited to broadcast television networks (*e.g.*, ABC, NBC and CBS). Cablevision's subscribers are not able to pause, rewind or fast-forward programming as it is aired.

17. On information and belief, Cablevision also offers "video-on-demand" to subscribers under the name "On Demand". This service consists of a menu of programming that a subscriber can view at a time of his or her own choosing. Subscribers pay an additional fee for most of Cablevision's On Demand programming (either on a pay-per-view basis or as a monthly fee for certain video-on-demand

programming), and Cablevision obtains a separate license for the right to transmit programming as "video-on-demand". Cablevision's subscribers have the ability to pause, rewind or fast-forward On Demand programming.

18. Some cable operators have sought and obtained licenses for "video-on-demand" use of programs owned by TCN LP and CNN LP. Neither TCN LP nor CNN LP has licensed Cablevision to distribute their programming as "video-on-demand".

THE SERVICE

19. On or about March 21, 2006, Cablevision sent a letter addressed to Turner Network Sales, Inc., an affiliate of TCN LP and CNN LP responsible for licensing the Cartoon Network and the CNN Network feeds, stating that Cablevision intends to commence a trial launch of the Service in June 2006 and will roll out the Service on a broader scale thereafter. (Ex. C.)

20. On information and belief, Cablevision will provide the Service as follows: Cablevision will give Service subscribers the opportunity to request that Cablevision make a copy of programming. The request can be made either as the programming is airing or in advance of the airing time. Upon receiving such a request, Cablevision will make an unauthorized digital copy of that programming on one of its own servers, at the time the programming airs. Cablevision's servers will be located at the "head-end" (Cablevision's central facility for receiving television signals for transmission over a cable television system). Cablevision will store the unauthorized copy on its servers for an indefinite period of time. On demand from a Service subscriber, Cablevision will transmit this stored programming to the subscriber in the same way as it transmits its On Demand service. Cablevision will not limit the number

of times that a Service subscriber can demand to view, or that Cablevision will transmit, the programming as part of the Service; a subscriber will have the ability to pause, rewind or fast-forward the programming (just as the subscriber does with Cablevision's On Demand service).

21. On information and belief, unauthorized copies made by the Service will be identical, or substantially similar, to the original copyrighted programming.

22. On information and belief, Cablevision intends to charge its subscribers for access to the Service.

23. On information and belief, Cablevision will be able to store an extensive library of programming that it has illegally copied for each of its Service subscribers. Such a use would not constitute a permissible time shifting and would not be a fair use either by the subscriber or by Cablevision under the Copyright Laws.

24. On information and belief, the servers onto which Cablevision will copy TCN LP's and CNN LP's copyrighted programming will at all times be under Cablevision's custody and control. Cablevision will have the technical ability to supervise and control the use of its servers. By offering the Service in the manner anticipated, Cablevision is affirmatively choosing to make and store unauthorized copies of programming and make unauthorized transmissions of that programming. Cablevision will have the technical ability to know what programming it has copied and stored on its servers, and what programming it has transmitted to its subscribers on demand as part of the Service.

25. On information and belief, Cablevision will have the ability to alter the programming that it transmits to subscribers as part of the Service, including the ability to remove, alter or replace the commercials shown with the original programming. Cablevision has publicly stated that the Service may lead to an increase in Cablevision's advertising revenues by enabling Cablevision to remove, alter and replace commercials associated with programming that it transmits to subscribers as part of the Service.

26. On information and belief, the servers that Cablevision will use to store unauthorized copies as part of the Service are manufactured by Arroyo Video Solutions, Inc. ("Arroyo"). Arroyo describes the operation of the server in this way:

> "As the operator you have ultimate control of the content, including the number of programs each subscriber can store and their availability window. You can even replace ads embedded in the original broadcast with those better targeted to each viewer based on demographic or other information at your disposal."

27. Although Cablevision has referred to the Service as a "remote-storage digital video recorder", the Service will in fact be materially different from a digital video recorder ("DVR"). Instead, on information and belief, the Service will operate in a manner similar to a "video-on-demand" service. Press accounts have indicated that the Service is "essentially another form of video on demand", and a senior Cablevision executive has said that the Service "will look a lot like video-on-demand". Neither TCN LP nor CNN LP has licensed Cablevision to distribute any of their programming as "video-on-demand" or to remove, alter or replace the commercials included in their network feeds.

THE INFRINGEMENTS

28. Each copy by Cablevision of TCN LP's and CNN LP's copyrighted programming constitutes an infringement of TCN LP's and CNN LP's

exclusive reproduction right.

29. Each transmission at a time other than the scheduled airing time (*i.e.*, on demand) by Cablevision of TCN LP's and CNN LP's copyrighted programming to Cablevision's Service subscribers constitutes an infringement of TCN LP's and CNN LP's exclusive public performance right.

CABLEVISION'S REFUSAL TO ENTER INTO LICENSING AGREEMENTS

30. On May 10, 2006, the parent company of TCN LP and CNN LP notified Cablevision that, unless licensed, the Service will infringe on TCN LP's and CNN LP's copyrights. The parent company of TCN LP and CNN LP also notified Cablevision that they are willing to enter into negotiations regarding licenses that are required for the Service. (Ex. D.) Cablevision has refused to negotiate such licenses.

31. There is an actual controversy between the parties regarding whether, without a license, the Service will infringe on TCN LP's and CNN LP's copyrights.

PLAINTIFFS' ECONOMIC OPPORTUNITIES FOR THE PROTECTED WORKS

32. TCN LP and CNN LP derive substantial economic benefit from their interests in their copyrighted programming: *inter alia*, they license their network feeds to Cablevision and other cable and satellite television operators in exchange for substantial licensing fees; they sell advertising for insertion in or around the programming on their networks; they license some of the programming on their networks to certain cable television operators for "video-on-demand" use; they utilize some of the programming on their networks for proprietary websites; they license some of the programming for syndicated distribution by other television networks; and they license

some of the programming on their networks for sale or rental as DVDs and videocassettes.

33. TCN LP and CNN LP are currently licensing other uses of their copyrighted programming for economic benefit, including license for use on the Internet, handheld devices and cell phones. TCN LP and CNN LP are also actively exploring additional licensing opportunities to derive further economic benefit from their copyrighted programming.

34. TCN LP and CNN LP will be irreparably harmed by Cablevision's illegal copying and transmission of their copyrighted programming because TCN LP and CNN LP will be deprived of the right and ability to negotiate the terms on which their copyrighted programming is used with respect to the Service and those terms will instead be unilaterally determined by Cablevision.

35. TCN LP and CNN LP will be irreparably harmed by Cablevision's illegal use of their copyrighted programming because each illegal copy made and/or transmitted as part of the service will compete with other licensed uses including, but not limited to, licenses for sale or rental as DVDs or videocassettes, licenses for video-on-demand distribution, and other licensing opportunities (*e.g.*, the Internet, handheld devices and cell phones). The harm to TCN LP and CNN LP will be difficult or impossible to quantify.

36. Cablevision's illegal copying and transmission of TCN LP's and CNN LP's copyrighted programming may negatively impact TCN LP's and CNN LP's negotiations with advertising buyers in a manner that will be difficult or impossible to quantify.

COUNT I

DECLARATORY JUDGMENT/COPYRIGHT INFRINGEMENT

[28 U.S.C. §§ 2201 and 2202, 17 U.S.C. §§ 106(1) and 502]

37. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1 through 36 above.

38. Plaintiffs own or are the exclusive licensees of copyrights in certain programming. Such programming consists of original works of authorship fixed in a tangible medium of expression.

39. As part of the Service, Cablevision intends to copy Plaintiffs' copyrighted programming.

40. At no time have Plaintiffs authorized Cablevision to copy their copyrighted programming in the manner anticipated by the Service, and Cablevision has no statutory right to copy the programming as part of the Service.

41. Cablevision has an immediate intent and ability to begin the Service and has undertaken meaningful preparatory steps toward launching the Service without a license from Plaintiffs.

42. Unless enjoined and restrained by the Court, Cablevision's actions in copying Plaintiffs' copyrighted works as part of the Service will cause irreparable harm to Plaintiffs.

43. There is an actual controversy between the parties, suitable for declaratory relief regarding *inter alia* whether Cablevision's Service will infringe Plaintiffs' exclusive right of reproduction under 17 U.S.C. § 106(1). Plaintiffs desire a judicial determination and declaration that Cablevision's copying of Plaintiffs' copyrighted programming, as part of the Service, will violate Plaintiffs' copyrights. Such

a determination is necessary and appropriate at this time in order to prevent infringement of Plaintiffs' valuable copyrights.

COUNT II

DECLARATORY JUDGMENT/COPYRIGHT INFRINGEMENT

[28 U.S.C. §§ 2201 and 2202, 17 U.S.C. §§ 106(4) and 502]

44. Plaintiffs repeat and incorporate herein by reference the allegations in paragraphs 1 through 43 above.

45. Plaintiffs own or are the exclusive licensees of copyrights in certain programming. Such programming consists of original works of authorship fixed in a tangible medium of expression.

46. As part of the Service, Cablevision intends to publicly perform Plaintiffs' copyrighted programming by transmitting such programming to Cablevision's subscribers on a "video-on-demand" basis without a license.

47. At no time have Plaintiffs authorized Cablevision to transmit Plaintiffs' copyrighted programming to Cablevision's subscribers on a "video-on-demand" basis in the manner anticipated by the Service, and Cablevision has no statutory right to transmit the programming in the manner anticipated by the Service.

48. Cablevision has an immediate intent and ability to begin the Service and has undertaken meaningful preparatory steps toward launching the Service without a license from Plaintiffs.

49. Unless enjoined and restrained by the Court, Cablevision's actions in transmitting Plaintiffs' copyrighted works as part of the Service will cause irreparable harm to Plaintiffs.

50. There is an actual controversy between the parties, suitable for declaratory relief regarding *inter alia* whether Cablevision's Service will infringe Plaintiffs' exclusive right of public performance under 17 U.S.C. § 106(4). Plaintiffs desire a judicial determination and declaration that Cablevision's transmission of Plaintiffs' copyrighted programming to Cablevision's subscribers, as part of the Service, will violate Plaintiffs' copyrights. Such a determination is necessary and appropriate at this time in order to prevent infringement of Plaintiffs' valuable copyrights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Cablevision and enter an order as follows:

(a) pursuant to 28 U.S.C. § 2201, declaring that Cablevision's Service will infringe Plaintiffs' exclusive right of reproduction pursuant to § 106(1) of the Copyright Act;

(b) pursuant to 28 U.S.C. § 2201, declaring that Cablevision's Service will infringe Plaintiffs' exclusive right of public performance pursuant to § 106(4) of the Copyright Act;

(c) pursuant to 17 U.S.C. § 502, preliminarily and permanently enjoining Cablevision from copying Plaintiffs' copyrighted works unless a license is first obtained;

(d) pursuant to 17 U.S.C. § 502, preliminarily and permanently enjoining Cablevision from transmitting Plaintiffs' copyrighted works to its subscribers as part of the Service unless a license is first obtained;

(e) for Plaintiffs' attorneys' fees, costs, and disbursements in this action; and

(f) for such other and further relief as the Court deems proper and just.

May 26, 2006

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by ______________________

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